(Spl. - H.C.A.S. C.D., 78-e)

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF BOMBAY AT GOA

PANAJI – GOA

APPELLATE SIDE

CRIMINAL MISC. APPLICATION NO. 14 OF 2005.

Office Notes, Office Memoranda of Quorum appearances, Court's orders, or directions and Registrar's orders.	Court's or Judge's Orders.

Shri S.N. Sardessai, Public Prosecutor for the State/Applicant.

Shri V.G.P. Dukle, Advocate for the Respondent absent.

CORAM : N.A. BRITTO, J.

DATE : 17th March, 2005.

P.C.

Heard Shri Sardessai, the learned P.P. on behalf of the Applicant/State who seeks leave to appeal against the acquittal of the respondent/accused under Sections 279 and 304-A I.P.C. by Judgment/Order dated 20.10.04 of the learned J.M.F.C., Margao.

2. The respondent/accused has chosen to remain absent.

3. . Admittedly, the accident took place between a Mini bus bearing No.GA-02-T-4054 driven by the said accused and the Scooter No.GA-O2-N-3078 driven by the deceased Veena Miranda who died in the said accident. The bus was going by Mungul road from Margao to Seraulim, while the said scooterist was coming in opposite direction. The prosecution examined several witnesses and amongst them P.W.2 Marvyn Caldeira and P.W.4 Ravi Gadgali who were stated to have been eye witnesses. P.W.2 Marvyn was stated to have been going behind the said Mini-bus on a motorcycle while P.W.4 Ravi was stated to have been going on a cycle. The learned J.M.F.C. has chosen not to place any reliance on the said two alleged eye witnesses and in my view rightly. Both P.W.2

Marvyn and P.W.4 Ravi who claimed to be eye witnesses admittedly did not see the actual impact between the said Mini-bus and the said scooter driven by the deceased. They also did not see each other's presence there. Not only that, their statements were recorded subsequently when they themselves volunteered to go to the Police Station and get their statements recorded. On the contrary, it was in the evidence of P.W.3 Seby Pinto that at the time of the accident there were two cows on the left side of the road going to Seraulim from Margao and when the girl Veena, daughter of Mervyn Miranda, avoided one cow, but could not avoid the other, she lost balance and went and dashed against the rear side of the bus with the scooter. Once the evidence of P.W.2 Marvyn and P.W.4 Ravi was rejected by the

learned J.M.F.C., there was no question of the accused being convicted for the offences alleged against him based on what P.W.3 Seby Pinto had stated. Moreover, the Investigation Officer had chosen not to examine any of the passengers in the said Mini-bus who were stated to have been regular passengers in the said bus and whose identity could have been known with little effort made by the I.O. In my view the acquittal of the accused could not be faulted. Therefore this not a fit case to grant leave.

4. Application is therefore hereby rejected.

N.A. BRITTO, J.

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